Contract Issues and Venue/Event Operations

Chapter 16

Exhibit 16.1 Management contexts in which issues related to event and operating agreements, with relevant laws and cases.

Management Context	*Major Legal Issues*	*Relevant Law*	*Illustrative Cases*
Oversight of any activity	Setting standard of care	Negligence	
Development of marketing materials	Accuracy of promotional materials	Breach of contract	*Nicklaus*
Oversight of youth sport programs	Validity of waivers signed by minors or parents	Contract law	*Boom, Hamill*
Supervision of K–12 athletics			
Athletic directors of school sports or university sports	School sports as essential services	Contract law	*Wagenblast, Kyriazis*
Ski resort managers	Skiing as essential service	Contract law	*Gregorie*
Providers of commercial outfitters	Violation of statutory duty and waivers	Contract law Statute setting standard of care	*Murphy*
Oversight of any sport/recreational activity	Public policy and waivers	Contract law	*Walker*
	Waiver language clarity	Contract law	*Geczi*
	Conduct within scope of activities	Contract law	*Semeniken, Lewis*
	Conduct beyond negligence	Contract law	*McGregor*
	Agreements to participate	Assumption of risk Comparative negligence Failure to warn	

Management Contexts, Relevant Laws, and Cases

The Covenant of Good Faith & Fair Dealing

The Covenant of Good Faith and Fair Dealing clause is key to the foundation of contract law.

- When dealing with another party through a contractual agreement, it is expected you deal with each other with honesty and fairness.
- It is in the best interest of your organization to avoid ambiguous language or use clichés in agreements.
- If A contracts with B to perform when the clock "strikes noon," the implied covenant of good faith would impose liability if A destroyed the clock to avoid having to meet the precise terms of the contracts.
- In other words, a technicality done in bad faith will not be upheld in court.

Facility Operations and Contractual Agreements

- Lease agreements
- Ticket agreements
- Promotional materials
- Codes of conduct and stadium policies
- Sponsorship and event vendor agreements
- Game contracts
- Exculpatory agreements
- Agreements to participate

Lease Agreements

- Rights and responsibilities of parties—lessor and lessee
- Included in a standard lease agreement:
  - Right to use and occupy
  - Rental fees
  - Fees for additional services
  - Revenue sharing
  - Renter's facility requirements
  - Rental usage terms and conditions
  - Kitchen sink provisions

Ticket Agreements

What rights or benefits do fans have when they purchase a ticket?

Represents a privilege to access the premises according to the terms and conditions of the license.

Contains a number of restrictions and conditions.

Competitive Advantage Strategies
Facility Operations

Examine contractual agreements carefully to determine if they are clear and comprehensive.

Make sure ticket policies and purchase agreements are clear; pay special attention to resolving customer complaints.

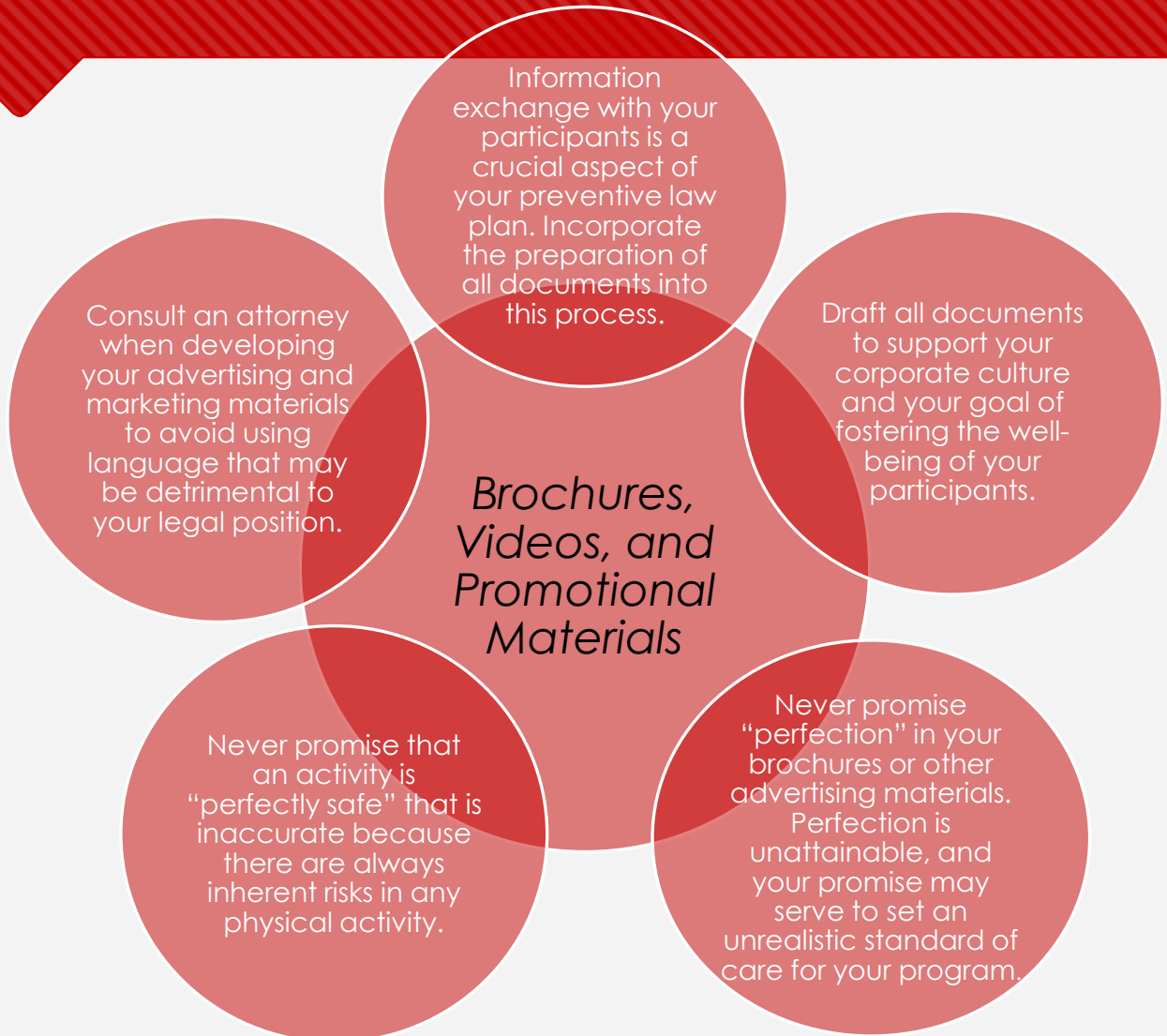
Have effective customer service procedures and trained customer service personnel.

Conduct studies regarding quality of customer service if you're receiving a high number of complaints.

Promotional Materials

- Language is not only a problem in terms of setting or raising the standard of care; an organization may also incur liability for breach of contract, fraud, misrepresentation, or a violation of a consumer protection statute if the language is inaccurate.
- When you are developing brochures, videos, and promotional materials for your programs, you should involve not only the marketing and advertising employees but also your attorney.
- The attorney can advise you regarding the legal impact of certain words or phrases that you wish to use.

Competitive Advantage Strategies Promotional Materials


Information exchange with your participants is a crucial aspect of your preventive law plan. Incorporate the preparation of all documents into this process.
Consult an attorney when developing your advertising and marketing materials to avoid using language that may be detrimental to your legal position.
Draft all documents to support your corporate culture and your goal of fostering the well-being of your participants.
Brochures, Videos, and Promotional Materials
Never promise that an activity is "perfectly safe" that is inaccurate because there are always inherent risks in any physical activity.
Never promise "perfection" in your brochures or other advertising materials. Perfection is unattainable, and your promise may serve to set an unrealistic standard of care for your program.

Brochures, Videos, and Promotional Materials Summarized

Involve	Involve an attorney as well as marketing/advertising employees.
Consider	Consider words' legal impact.
Consider	Consider the effect language choice has on setting standard of care.
Avoid	Avoid absolute assertions.

Code of Conduct and Stadium Policies

- Organizations can and should also post Codes of Conduct for rules and expected behavior of participants. This type of language allows you to have the authority to remove or reprimand a participant who does not follow it.

NBA Fan Code of Conduct

Exhibit 16.2 NBA fan code of conduct.

The National Basketball Association and team arenas are committed to creating a safe, comfortable, and enjoyable sports & entertainment experience. NBA fans have a right to expect an environment where:

- Players will respect and appreciate each and every fan.
- Guests will be treated in a consistent, professional and courteous manner by all arena and team personnel.
- Guests will enjoy the basketball experience free from disruptive behavior, including foul or abusive language or obscene gestures.
- Guests will consume alcoholic beverages in a responsible manner. Intervention with an impaired, intoxicated or underage guest will be handled in a prompt and safe manner.
- Guests will sit only in their ticketed seats and show their tickets when requested.
- Guests will not engage in fighting, throwing objects or attempting to enter the court, and those who engage in any of these actions will immediately be ejected from the game.
- Guests will smoke in designated smoking areas only.
- There will not be any obscene or indecent messages on signs or clothing.
- Guests will comply with requests from arena staff regarding arena operations and emergency response procedures.

The NBA and team arenas thank you for adhering to the provisions of the NBA Fan Code of Conduct (NBA Media Ventures, LLC, 2019).

Sponsorship and Event Vendor Agreements

- Sponsorships are a key aspect of successful facilities and events.
- It is critical to have all agreements in writing.
- An agreement for smaller or in-kind sponsorships (i.e., goods or resources rather than cash) should not be overwhelming or intimidating.
- Larger, cash sponsorships do, however, require a thorough agreement.
- These agreements should cover details such as the money or goods/resources to be exchanged, dates of delivery and payment, which party is responsible for delivery, what happens in the event of a cancelation, and more.

Components of Game Contracts

- Location, time, and place of an event
- Financial arrangements
- Eligibility and game rules
- Termination provision
- Force majeure clause
- Broadcast rights provision
- Insurance and indemnification provisions
- Complimentary tickets
- Promotional rights

Exculpatory Agreements

- A contract in which a person or entity that is legally at fault tries to excuse itself from fault.
- Exculpatory clause:
  - Relieves party from liability resulting from a negligent or wrongful act
  - May be a waiver or pre-injury release

Waivers

A contract in which one party gives up the right to sue another party

A court that upholds a waiver is giving precedence to contract law over tort law

Upheld when criteria of context and content are met

Waivers and Releases

Waivers and releases are often enforceable so long as they satisfy two criteria:

- They are used in the right circumstances *(context)*.
- They are written properly *(content)*.

Agreements to Participate

Another version of an agreement that can be used either in conjunction with or in lieu of an exculpatory agreement is an agreement to participate.

Regardless of the use of or effectiveness of an exculpatory agreement for your particular situation and location, you must still disclose information, including the risks of the activity, to the participant.

Here are the 3 essential components of all agreements to participate:

- The nature of the activity
- The expectations of the participant
- The condition of the participant

Communicating with Sport and Recreation Participants

Conveys and reinforces concern for participants' welfare.

Makes participation experiences better and safer.

Can help to avoid liability.

Context of Waivers

Is the person who is giving up the right to sue a minor?

What are the public policy considerations?

Legal Review

- How far should parental rights extend regarding decision making for their children?
- Do you think teenagers are old enough to make their own decisions about what activities to engage in?

Public Policy Considerations of Waivers

Can a waiver be used without violating public interest?

Does the situation concern essential services?

Is it a fair deal?

Does a provider of recreation activities meet a certain standard of care?

Different jurisdictions have differing policies about what is permissible.

Essential Services

- Some organizations have a duty to serve the public (e.g., hospitals); it would be inappropriate for them to use waivers.
- Education is also considered essential:
  - Waivers may be inappropriate in interscholastic or collegiate sport, when sports are part of the educational mission of the institution

Content of Waivers

Was the waiver document written properly?

Terms must be conspicuous.

Language must be clear, unambiguous, and explicit.

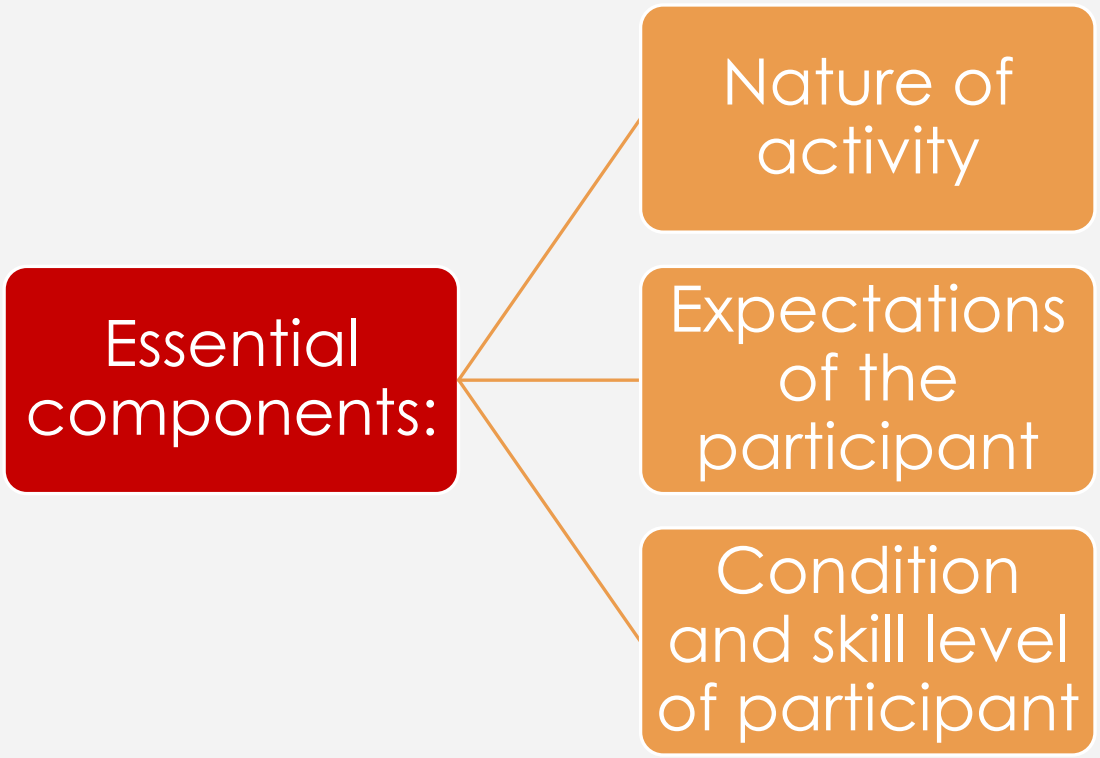
Language cannot exonerate for conduct beyond negligence.

Competitive Advantage Strategies
Waivers and Exculpatory Agreement

- Consult an attorney regarding state requirements.
- Remember that in most jurisdictions a minor may disavow a waiver.
- Do not use an exculpatory clause you know isn't valid in order to persuade people not to sue.
- Exculpatory clauses should be conspicuous; use clear, unambiguous language.
- Give participants plenty of time to read the waiver before signing.
- Do not use group release forms.
- Never say the waiver is "meaningless" or "just policy."

Agreements to Participate

Can be used instead of, or in addition to, an exculpatory agreement.



Competitive Advantage Strategies
Agreements to Participate

- **Always use an agreement to participate:**
  - To share risk information
  - To avoid a failure-to-warn allegation
- **Have participants agree to follow the rules of conduct:**
  - To make the experience enjoyable and safe
  - To enable a comparative-negligence defense

Legal Review

- When you are asked to read and sign a waiver, do you usually read the document closely before you sign?
- What would you tell a friend who says "Oh, I never read the small print. It's not important, anyway, since I'm careful and I won't get hurt."?